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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
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Item 3 of the provisional agenda
Consideration of the draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 1-3

Revised draft United Nations Convention against Transnational Organized Crime[1]

Article 1[2]
Statement of objectives

1. The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems.[3]

2. Each State Party shall take effective measures to promote and monitor within its territory the implementation of the object and aims of the Convention.

3. Each State Party may adopt more strict or severe measures than those provided for by the Convention for the prevention and control of transnational organized crime.

[1] In the present text, certain words, sentences or entire paragraphs have been placed in square brackets, which in some cases may indicate that the text in question has not been discussed, or that delegations expressly stated that the text required further consideration. The absence of brackets should not be construed as approval of the text in question by the Ad Hoc Committee at its first session.

[2] One delegation proposed the following order for the first four articles in both the Convention and the optional Protocols: article 1 (Purpose), article 2 (Definitions), article 3 (Scope of application) and article 4 (Criminalization).

[3] One delegation proposed the deletion of the second sentence in this paragraph.

Article 2
Scope of application

1. The Convention shall, except as otherwise provided herein,[4] apply to the prevention, investigation and prosecution of serious crime involving an organized criminal group as defined in article 2 *bis* and the offences established in articles 3 and 4.

[2. Among the circumstances that may be taken into account in deciding whether there are reasonable grounds to believe that a criminal organization is involved are the following:

(a) The nature of the offence;

(b) The transnational character of the offence;

(c) Whether money-laundering is involved; and

(d) Whether the offence required significant planning or means for its commission.[5]][6]

[3. For the purposes of the application of paragraph 1 above, "serious crime" shall be deemed to include, among others, acts such as the following:

(a) Illicit traffic in narcotic drugs or psychotropic substances and money-laundering, as defined in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;[7]

(b) Traffic in persons, as defined in the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949;[8]

(c) Counterfeiting currency, as defined in the International Convention for the Suppression of Counterfeiting Currency of 1929;[9]

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[4] One delegation noted that, in certain cases, owing to the fact that an investigation was at a preliminary stage, it might not be possible for a requested State to establish with certainty that a particular offence was connected to organized crime. That should be taken into consideration in determining the scope of application of the various articles dealing with international cooperation, such as mutual legal assistance.

[5] One delegation noted that the phrase "significant ... means for its commission" should be clarified. The delegation noted that the emphasis should be on the intent, as reflected in the planning of the offence; it was the view of that delegation that the means used for its commission to commit the offence was of little significance.

[6] The drafting of paragraph 1 was based on a proposal submitted by Canada (A/AC.254/L.2). The drafting of paragraphs 2-4 was based on a proposal submitted by Colombia (A/AC.254/L.2).

In the discussions on the scope of the draft Convention that took place at the first session of the Ad Hoc Committee, many delegations expressed their preference for defining the scope on the basis of paragraph 1, not on the basis of additional paragraphs 2-4. They noted their strong opposition to the inclusion of paragraph 3, although some of those delegations noted that an illustrative list of offences could be inserted in the *travaux préparatoires*. However, some other delegations expressed their support for the inclusion also of paragraphs 2-4 and noted their strong support for the inclusion of paragraph 3 as an indicative, but not exhaustive, list of the offences covered by the Convention.

Regarding paragraph 2, some delegations noted that it was unclear whether the assessment called for was to be made by the requesting State, the requested State or both.

[7] United Nations publication, Sales No. E.91.XI.6.

[8] Resolution 317 (IV), annex.

[9] *League of Nations Treaty Series*, vol. 112, p. 171.

(d) Illicit traffic in or stealing of cultural objects, as defined by the United Nations Educational, Scientific and Cultural Organization Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970,[10] and the International Institute for the Unification of Private Law Convention on Stolen or Illegally Exported Cultural Objects of 1995;[11]

(e) Stealing of nuclear material, its misuse or threats to misuse or harm the public, as defined by the Convention on the Physical Protection of Nuclear Material of 1980;[12]

(f) Acts contained in the United Nations conventions against terrorism;[13]

(g) Illicit manufacture of and traffic in firearms, their parts and components, ammunition, or explosive materials or devices;[14]

(h) Illicit traffic in or stealing of motor vehicles, their parts and components; and

(i) Corruption of public officials and officials of private institutions.][15]

[4. For the purposes of this Convention, acts such as those noted in paragraph 3 of this article shall be understood as offences even though they may be defined with different designations in the domestic law of a State Party.][16]

Non-applicability to offences with solely domestic connections[17]

Option 1

5. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State.

Option 2

5. This Convention shall not apply where the offence is committed within a single State, all members of the criminal group are nationals of that State and the victims are nationals or entities of that State, except that the provisions of articles concerning judicial assistance may, as appropriate, apply where the offence is serious and of an organized nature.

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[10] United Nations, *Treaty Series*, vol. 823, No. 11806.

[11] [To be completed.]

[12] United Nations, *Treaty Series*, vol. 1456, No. 24631.

[13] One delegation proposed that reference be made to the 1998 Arab Convention on Combating Terrorism. Some delegations were of the view that the Convention, while not intended as an instrument against terrorism, should endeavour to cover the emerging links between terrorist acts and organized crime.

[14] One delegation proposed that the definition used in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials should be used.

[15] See footnote 6 above. Individual delegations also proposed the inclusion of illicit traffic in women and children under subparagraph (b), as well as the inclusion of the following as additional subparagraphs: illicit traffic in migrants; illicit traffic in endangered animals; illicit traffic in human body parts; and illicit access to computer systems and equipment.

[16] See footnote 6 above.

[17] Some delegations proposed the deletion of both options in this paragraph. Some other delegations, however, stated that the scope of the Convention should only include offences with a transnational dimension.

Principle of non-intervention

6. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Exclusive exercise of jurisdiction and performance of functions

7. A State Party shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are exclusively reserved for the authorities of that other State by its domestic law.

Protocols

8. The annexed Protocols form an integral part of this Convention.[18]

Choice of international instrument[19]

9. [*Insert the provision on the selection of instrument when several international instruments would be applicable.*]

10. States Parties may apply article(s) [...] of this Convention to other multilateral conventions to the extent agreed between States Parties.

Article 2 bis
Use of terms[20]

For the purposes of this Convention:

(a) "Organized criminal group" means a structured group of [three][21] or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit;[22]

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[18] In connection with the consideration of the Protocols, there was considerable discussion of the link between the Protocols and the Convention. Australia made a proposal to the effect that a State Party to one of the Protocols must also be a party to the Convention and that a State Party to the Convention should not be bound by a Protocol unless the Party had expressly accepted the Protocol (A/AC.254/L.9).

Two delegations proposed the deletion of paragraph 8.

[19] This issue is also dealt with in article 24.

[20] It was noted that other terms used in the Convention should also be defined. In the context of the discussion on article 15, the following terms were noted by some delegations as requiring definition: "controlled delivery"; "surveillance, including electronic surveillance"; and "undercover operations". [*Rapporteur's note*: the definition of "controlled delivery" used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 was accepted as the basis and is included in an adapted form that was not discussed by the Ad Hoc Committee at its first session.] It was also suggested that these definitions could be inserted into the *travaux préparatoires*.

[21] One delegation was of the opinion that no minimum number of group members needed to be stated.

[22] Some delegations noted that, in view of the General Assembly mandate, a definition that referred only to "financial and other material benefit" as a motive for criminal activity was too limited.

Colombia proposed the following definition (A/AC.254/L.2): " 'Organized crime' means illegal activity of two or more persons, with hierarchical links or personal relationships, whether or not of a permanent nature, aimed at obtaining economic advantages by means of violence, intimidation or corruption". Uruguay subsequently submitted a proposal to end that definition with the words "by means of violence, intimidation, corruption or other means".

Belgium submitted in writing the following definition: " 'Organized criminal group' means a structured group of three or more persons established over a period of time and having the purpose to commit in a concerted fashion serious crimes in the sense of the present Convention in order to derive, directly or indirectly, financial profit or other material benefit by utilizing [in particular] intimidation.

(b) "Serious crime" means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [...] years or a more serious penalty;[23]

(i) For the purpose of implementing articles [...] of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws;

(ii) For the purpose of implementing articles [...] of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws;

(c) "Structured group" means a group that is not randomly formed for the immediate commission of a crime and that needs not have formally defined roles for its participants, the continuity of its membership or a developed structure;

(d) "Existing for a period of time" means being of sufficient duration for the formation of an agreement or plan to commit a criminal act;

[(e) "Property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such property;

(f) "Proceeds of crime" means any property derived from or obtained, directly or indirectly, through the commission of any offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention];[24]

(g) "Freezing or seizure" means the ordering by the competent authority of the temporary prohibition of the transfer, conversion, exchange, disposal or realization of property and the temporary custody or control thereof;

(h) "Confiscation", which includes forfeiture where applicable, means the permanent deprivation of property, proceeds or instrumentalities of an offence by order of a court or other competent authority;][25]

(i) "Predicate offence" means any crime or offence as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention;

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threats, violence, fraud or corruption or other means to conceal or facilitate the realization of those serious crimes."

The delegation of Belgium also proposed that consideration be given to excluding from the scope of application of the Convention organizations with solely political objectives and organizations whose purpose was solely humanitarian, philosophical or religious.

[23] Several delegations noted that establishment of seriousness on the basis of the length of possible sentence might lead to difficulties in practice, owing to differences in penal systems. One delegation noted that the issue of seriousness should be decided in accordance with the domestic legislation of the two States concerned in a case.

[24] The scope of this Convention is still subject to deliberation. For this reason, throughout the present text the alternatives "an offence established in article(s) [...]" (which in the current draft would be article 3, on participation in a criminal organization, and article 4, on money-laundering) and "an offence covered by this Convention" (which would have a broader scope, as established by article 2) are provided, as appropriate.

[25] Subparagraphs (e)-(h) were submitted by Colombia (A/AC.254/L.2). [*Rapporteur's note*: the draft definitions submitted by Colombia have been amended to reflect the definitions used in the 1988 Convention, with the words "proceeds or instrumentalities of an offence" added to the definition of "confiscation", as proposed by Colombia.]

(j) "Controlled delivery" means the technique of allowing illicit or suspect consignments [of ...] to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention].

(k) "Financial institution" means any credit establishment, insurance and bonding company, general bonded warehouse, financial leasing company, savings and loan institution, finance company with limited objects, credit union, financial factoring company, stockbroking firm or other securities dealer, currency exchange bureau, pension fund administrator or other financial or currency broker.][26]

Article 3
Participation in a criminal organization

Option 1

1. Each State Party shall undertake, in accordance with the fundamental principles of its domestic legal system, to make punishable one or both of the following types of conduct:

(a) Conduct by any person consisting of an agreement with one or more persons that an activity should be pursued, which, if carried out, would amount to the commission of crimes or offences that are punishable by imprisonment or other deprivation of liberty of at least [...] years; or

(b) Conduct by any person who participates in a criminal organization, where such participation is intentional and is either with the aim of furthering the general criminal activity or criminal purpose of the group or made in the knowledge of the intention of the group to commit offences.

2. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

Option 2[27]

1. Each State Party shall establish as criminal offences the following conduct:

(a) Organizing, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organized criminal group; and

(b) Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit a serious crime for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement;

[26] The definition of "financial institution" is based on a proposal submitted by Mexico (A/AC.254/L.7). It was not discussed by the Ad Hoc Committee at its first session.

[27] Option 2 was submitted by the United Kingdom of Great Britain and Northern Ireland (A/AC.254/L.4) and was not discussed by the Ad Hoc Committee at its first session.

(ii) Conduct by a person who intentionally, and with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

a. Activities of an organized criminal group referred to in article 2 *bis* of this Convention;

b. Other activities of the group in the knowledge that the person's participation will contribute to the achievement of the above-described criminal aim.

2. The knowledge, intent, aim, purpose or agreement referred to in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 4[28]
Money-laundering[29]

Option 1

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

(b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to or ownership of property, knowing that such property is the proceeds of crime; and, subject to its constitutional principles and basic concepts of its legal system;

(c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

Option 2[30]

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) The acquisition, disposal, administration, safe-keeping, exchange, deposit, guaranteeing, investment, transport, possession, granting or transfer of funds, rights or property of any kind, knowing that such funds, rights or property are derived from, or represent the proceeds of, crime, for the purpose of concealing,

[28] This article is to be considered by the Ad Hoc Committee at its third session.

[29] At the informal preparatory meeting of the Ad Hoc Committee held in Buenos Aires from 31 August to 4 September 1998, it was suggested that the lack of a definition of money-laundering in this article would need to be addressed. It was also suggested that such a definition should cover a broad range of predicate offences.

[30] Option 2 is based on a proposal submitted by Mexico (A/AC.254/L.7).

disguising or preventing the discovery of the illicit origin thereof or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

(b) The concealment or attempted concealment, disguise or prevention of the discovery of the origin, destination, ownership, true nature, source, location, disposition, movement or rights with respect to funds, rights or property of any kind, knowing that such funds, rights or property are derived from, or represent the proceeds of, crime;

(c) The possession or use of funds, rights or property of any kind, knowing, at the time of receipt or subsequently, that such funds, rights or property are derived from, or represent the proceeds of, crime;

(d) Participation in, association with or conspiracy to commit, attempting to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For the purposes of implementing or applying paragraph 1 of this article:

(a) It shall not matter whether the predicate offence was subject to the criminal jurisdiction of the State Party;

(b) It may be provided that the offences set forth in that paragraph do not apply to the persons who committed the predicate offence;

Option 1

(c) Knowledge, intent or purpose required as an element of an offence set forth in that paragraph may be inferred from objective factual circumstances.

Option 2

(c) Knowledge, intent or purpose required as an element of the offences set forth in that paragraph may be inferred from strong evidence or objective, factual circumstances, the offender being required to give proof of the legitimate origin of the funds, rights or property.[31]

3. Each State Party may adopt such measures as it considers necessary to establish also as offences under its domestic law all or some of the acts referred to in paragraph 1 of this article, in any or all of the following cases where the offender:

(a) Ought to have assumed that the property was the proceeds of crime;

(b) Acted for the purpose of making a profit;

(c) Acted for the purpose of promoting the perpetration of further criminal activity.

[4. States Parties shall take appropriate measures to ensure that assets generated by illegal activity or its proceeds are not made legal and shall take legal measures to ensure that:

(a) A person convicted as a member of organized crime shall prove the legality of the purchase of goods that belong to him [or her] or in respect of which he [or she] acts as owner, otherwise they shall be confiscated;[32]

[31] Option 2 is based on a proposal submitted by Mexico (A/AC.254/L.7).

[32] At the informal preparatory meeting held in Buenos Aires in 1998, some delegations expressed reservations stemming from difficulties of a constitutional nature regarding reversal of the burden of proof.

(b) Goods that are the proceeds of the illegal activities of organized crime cannot be transferred as an inheritance, bequest or gift or in any other way;

(c) Goods that are the proceeds of illegal activities will be deemed illegal, and legal principles shall not apply to them;

(d) States shall establish fines as penalties in proportion to the sums obtained by the activities of organized crime.]

Option 1

[5. States Parties shall adopt appropriate measures to apply instruments that relate to money-laundering to banking or financial markets, including stock exchanges, *bureaux de change* etc.]

Option 2[33]

[5. States Parties shall adopt appropriate measures to apply instruments that detect money-laundering at banking and non-banking financial institutions.]

6. Nothing contained in this article shall affect the principle that the description of the offences to which it refers and of legal defences thereto is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in conformity with that law.

Article 4 bis[34]
Measures to combat money-laundering[35]

Option 1

1. Each State Party shall institute a domestic regulatory regime for financial institutions[36] doing business within its jurisdiction to deter and detect money-laundering. Such regimes shall include the following minimum requirements:

(a) The licensing and periodic examination of such institutions;

(b) The elimination of bank secrecy laws that may impede the operation of States Parties' anti-money-laundering programmes;[37]

(c) The making and retaining by such institutions of clear and complete records of accounts and transactions at, by or through the institution for at least five years and ensuring that those records are available to appropriate authorities for use in criminal investigations, prosecutions and regulatory or administrative investigations and proceedings;

[33] Option 2 is based on a proposal submitted by Mexico (A/AC.254/L.7).

[34] This article is to be considered by the Ad Hoc Committee at its third session.

[35] There was no discussion on this article during the informal preparatory meeting held in Buenos Aires in 1998, when it was submitted. One delegation at that meeting expressed the view that the issue should be considered taking into account other regional initiatives.

[36] The term "financial institution" includes, at a minimum, banks, other depository institutions and appropriate non-bank providers of financial services (such as securities dealers or brokers, commodities futures dealers or brokers, currency dealers and exchangers, fund transmitters and casinos).

[37] At the informal preparatory meeting held in Buenos Aires in 1998, one delegation expressed reservations regarding the elimination of bank secrecy.

(d) Ensuring the availability to law enforcement, regulatory and administrative authorities of information held by such institutions on the identity of clients and beneficial owners of accounts; to this end, States Parties shall prohibit financial institutions from offering accounts identified only by number, anonymous accounts or accounts in false names; and

(e) Requiring such institutions to report suspicious or unusual transactions.

Option 2[38]

1. Each State Party shall institute the necessary regulations for banking and non-banking financial institutions within its jurisdiction to prevent and detect money-laundering. Such regimes shall include the following minimum requirements:

(a) The granting of licences or authorization to conduct financial activities;

(b) The lifting of bank secrecy in cases involving measures for the prevention and investigation of the crime of money-laundering, in accordance with the precepts laid down in the domestic legislation of each State Party;

(c) The institution of advisory and supervisory mechanisms for financial institutions for the purpose of verifying compliance with programmes, standards, procedures and internal controls established for such institutions; and

(d) Requiring such institutions to report suspicious or unusual transactions.

2. States Parties shall examine their domestic regimes relating to the establishment of business organizations and shall consider whether additional measures are required to prevent the use of such entities to facilitate money-laundering activities.

3. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements. The measures may include a requirement that individuals and businesses report cross-border transfers of substantial quantities of cash and appropriate negotiable instruments.

4. States Parties shall enhance their ability to exchange information collected pursuant to this article. This shall, where possible, include measures to enhance domestic and international exchange of information between law enforcement and regulatory authorities. To this end, States Parties shall consider the establishment of financial intelligence units to serve as national centres for the collection, analysis and dissemination of information regarding potential money-laundering and other financial crimes.

5. In establishing regimes to combat money-laundering, States Parties should consider, in particular, the 40 recommendations of the Financial Action Task Force on Money-Laundering, as well as other relevant anti-money-laundering initiatives endorsed by the Organization of American States, the European Union, the Council of Europe and the Caribbean Financial Action Task Force.

6. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

[38] Option 2 is based on a proposal submitted by Mexico (A/AC.254/L.7). In that proposal, Mexico also suggested including references to some of the recommendations of relevant expert groups, including the Financial Action Task Force against money-laundering.

Article 4 ter
Measures against corruption[39]

States Parties obligate themselves to take the following measures to effectively combat corruption and bribery [involving an organized criminal group]:

[An act of corruption in the public sphere committed within the framework of organized crime in order to facilitate such criminal activities shall be considered an aggravating factor.]

[A State Party that has not yet adopted the legal measures necessary for consideration in its domestic law of an act of corruption as an aggravating factor, as referred to in paragraph [...], shall do so.]

[List of measures to be inserted.]

Article 5
Corporate liability[40]

1. Each State Party shall [, as appropriate,] take the measures needed to ensure that legal [corporate] persons may be held liable where they [knowingly] [or through failure of supervision] profit from a criminal activity or participate in the working of a criminal organization.[41]

2. Subject to the fundamental legal principles of the State Party, the liability of the legal [corporate] persons may be criminal, civil or administrative.

3. Such liability shall be incurred without prejudice to the criminal [or civil] liability of the natural persons who have committed the offences or of their accomplices.

4. Each State Party shall, in particular, ensure that legal [corporate] persons may be punished in an effective, proportionate and deterrent manner and that substantial economic penalties may be imposed on them.

[5. Each State Party shall, where necessary and for the purposes of this Convention, establish in its domestic legislation an appropriate penalty for employees or managers of financial institutions or of institutions entrusted with supervisory functions in cases where such persons fail to comply with any or all of the supervisory arrangements laid down.][42]

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[39] This article, which was not subject to discussion at the first session of the Ad Hoc Committee, is a combination of two proposals submitted independently of one another: a proposal submitted by the United States of America (A/AC.254/L.11) (the title, the first two lines and the reference in brackets at the end to the future insertion of measures) and a proposal submitted by Uruguay (the two full paragraphs in brackets).

[40] This article was redrafted on the basis of a proposal submitted by France (see A/AC.254/5).

[41] Several delegations suggested that such liability should be incurred only if intent or (serious) negligence could be shown. Other delegations noted that there was a need to define such terms as "profit" and "participation in". One delegation observed that liability should be incurred also when the corporate body had served as a cover for criminal activity, even when it had not profited from such activity. Another delegation questioned whether liability should be incurred if only a few officers in the corporate body had participated in the criminal activity.

[42] This paragraph was submitted by Colombia (A/AC.254/L.5).

Article 6

Effective prosecution, adjudication and sanctions[43]

1. Each State Party shall make the commission of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] liable to sanctions that take into account the grave nature of those offences, such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation.[44]

2. States Parties shall endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences that are the subject of this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. States Parties shall ensure that[45] their courts or other competent authorities bear in mind the serious nature of the offences that are the subject of this Convention when considering the [eventuality] [possibility] of early release[46] or parole of persons convicted of such offences.[47]

4. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence that is the subject of this Convention and a longer period where the alleged offender has evaded the administration of justice.[48]

[5. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.][49]

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[43] This article was reformulated at the first session of the Ad Hoc Committee on the basis of a proposal submitted by France (A/AC.254/5). One delegation emphasized the need for provisions on procedural safeguards.

[44] With respect to the sanctions referred to here, at the informal preparatory meeting held in Buenos Aires in 1998, it was noted that, according to article 1, paragraph 3, States could adopt stricter or more severe measures than those foreseen in the Convention. Another suggestion was to include a provision that would encourage States to consider the commission of an offence by a criminal organization as an aggravating circumstance for the purpose of sanctioning.

At the first session of the Ad Hoc Committee, one delegation proposed the deletion of the phrase "such as imprisonment or other forms of deprivation of liberty, pecuniary sanctions and confiscation".

[45] One delegation proposed that "ensure that" be amended to read "authorize".

[46] One delegation noted that "early release" was used in the penal systems of only some countries. Several delegations noted that early release and parole depended on several criteria, including the conduct of the prisoner. It was suggested that one way of addressing that problem might be to replace the word "eventuality" with the word "possibility".

[47] Several delegations questioned whether this paragraph could be understood as infringing on the independence of the courts and allowing the possibility of politically motivated interference in the administration of justice.

[48] One delegation suggested that this paragraph should not be compulsory. Another delegation noted the importance of identifying which offences would fall under the scope of application of the Convention.

[49] The Ad Hoc Committee noted that the transfer of this and the following paragraph to article 9, on jurisdiction, was still to be considered.

[6. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.][50]

7. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that a person who is charged with or convicted of an offence that is the subject of this Convention and who is found within its territory is present at the necessary criminal proceedings.[51]

Article 7[52]
Confiscation

Option 1

States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from an offence established in article(s) [...] [*alternatively*: from an offence covered by this Convention] or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in an offence established in article(s) [...] [*alternatively*: in an offence covered by this Convention].

Option 2

1. States Parties shall adopt such measures as may be necessary to enable confiscation of:

(a) Proceeds derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or intended for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. For the purposes of paragraphs 1 and 2 of this article, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

4. (a) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the State Party in whose territory

[50] It was noted that a similar provision was contained in article 9, paragraph 5.

[51] Some delegations questioned why a person already convicted of an offence should be present at the "necessary criminal proceedings". Some delegations suggested that, to the extent that paragraph 7 referred to the taking of a person into custody pending extradition, it should be moved to the appropriate article (article 10). One delegation noted the need to ensure the rights of the defendant in the implementation of the paragraph. One delegation proposed the deletion of the paragraph.

[52] This article is to be considered by the Ad Hoc Committee at its third session.

proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article are situated shall:

(i) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, give effect to it; or

(ii) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by the requesting Party in accordance with paragraph 1 of this article, insofar as it relates to proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 situated in the territory of the requested Party;

(b) Following a request made pursuant to this article by another State Party having jurisdiction over an offence established in article(s) [...] [*alternatively*: over an offence covered by this Convention], the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, instrumentalities or any other things referred to in paragraph 1 of this article for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under subparagraph (a) of this paragraph, by the requested Party;

(c) The decisions or actions provided for in subparagraphs (a) and (b) of this paragraph shall be taken by the requested State Party, in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral treaty, agreement or arrangement to which it may be bound in relation to the requesting Party;

(d) The provisions of article [...] (on mutual assistance) are applicable *mutatis mutandis*. In addition to the information specified in article [...], paragraph [...], requests made pursuant to this article shall contain the following:[53]

(i) In the case of a request pertaining to subparagraph (a) (i) of this paragraph, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested Party to seek the order under its domestic law;

(ii) In the case of a request pertaining to subparagraph (a) (ii), a legally admissible copy of an order of confiscation issued by the requesting State Party upon which the request is based, a statement of the facts and information as to the extent to which the execution of the order is requested;

(iii) In the case of a request pertaining to subparagraph (b), a statement of the facts relied upon by the requesting State Party and a description of the actions requested;

(e) Each State Party shall furnish the Secretary-General with the text of any of its laws and regulations that give effect to this paragraph and the text of any subsequent changes to such laws and regulations;[54]

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[53] At the informal preparatory meeting held in Buenos Aires in 1998, it was suggested that subparagraph (d) could be transferred to the article on mutual legal assistance.

[54] At the informal preparatory meeting held in Buenos Aires in 1998, it was suggested that subparagraph (e) could be transferred to the article on the role of the United Nations and other organizations.

(f) If a State Party elects to make the taking of the measures referred to in subparagraphs (a) and (b) of this paragraph conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis;

(g) States Parties shall seek to conclude bilateral and multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation pursuant to this article.

5. (a) Proceeds of crime or property confiscated by a State Party pursuant to paragraph 1 or paragraph 4 of this article shall [, without prejudice to the rights of bona fide third parties,] be returned to its bona fide lawful owner where such owner can be identified. In other respects, said proceeds or property shall be disposed of by that Party according to its domestic law and administrative procedures;[55]

(b) When acting on the request of another State Party in accordance with this article, a Party may give special consideration to concluding agreements on:

(i) Contributing the value of such proceeds and property, or funds derived from the sale of such proceeds or property, or a substantial part thereof, to intergovernmental bodies specializing in the fight against organized crime;

(ii) Sharing with other States Parties, on a regular or case-by-case basis, such proceeds or property, or funds derived from the sale of such proceeds or property, in accordance with its domestic law, administrative procedures or bilateral or multilateral agreements entered into for this purpose.

6. (a) If proceeds of crime have been transformed[56] or converted into other property, such property shall be liable to the measures referred to in this article instead of the proceeds;

(b) If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to seizure or freezing, be liable to confiscation up to the assessed value of the intermingled proceeds;

(c) Income or other benefits derived from:

(i) Proceeds of crime;

(ii) Property into which proceeds of crime have been transformed or converted; or

(iii) Property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. Each State Party may consider ensuring that the onus of proof is reversed regarding the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

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[55] At the informal preparatory meeting held in Buenos Aires in 1998, it was suggested that there should be no confiscation by the State of any property to which a bona fide third party had a legitimate claim.

[56] In the version of the draft Convention that was before the Ad Hoc Committee at its first session (A/AC.254/4), the term "transferred" was erroneously used in this connection.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Cooperation under this article may be refused by a State Party if the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.

Article 8[57]
Transparency of transactions

1. States Parties shall implement measures to detect and monitor the physical transportation of cash and bearer-negotiable instruments at the border, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of legitimate capital movements.

2. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, States Parties shall take measures to gather financial information and, as much as possible, shall facilitate the exchange of such information, including exchanges between law enforcement agencies and regulatory bodies.

Article 9
Jurisdiction[58]

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in article(s) [...] when the offence is committed in the territory of that State or on board a vessel or aircraft registered in the State.[59]

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The alleged offender is a national [or a habitual resident] of that State;

(b) The offence was committed against [that State or] a national of that State [; or][60]

[(c) The offence has substantial effects in that State].[61]

[2 *bis*. Paragraph 2 may also apply to other offences mentioned in this Convention.][62]

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[57] This article is to be considered by the Ad Hoc Committee at its third session. It was noted that this article would be superseded by article 4 *bis*.

[58] Several delegations noted that the Convention should include an article on the settlement of disputes over jurisdiction.

[59] Some delegations suggested that the wording of this article be compared with the wording of article 4 of the 1988 Convention.

[60] Some delegations expressed a reservation about this subparagraph. One delegation noted that the scope of application of the subparagraph would presumably include money-laundering, an offence not directed at a national of any State.

[61] Several delegations stated that this subparagraph was ambiguous and should be deleted.

[62] Several delegations proposed the deletion of this paragraph. Some delegations noted that retaining paragraph 3 would make this paragraph redundant.

[3. This Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.][63]

4. The provisions of this article shall not affect the obligations with regard to the establishment of jurisdiction over offences pursuant to any other [bilateral or] multilateral treaty.

5. In a case where more than one State claims jurisdiction over an offence covered by the present Convention, the States concerned [shall seek] to coordinate their actions in an effective manner, in particular regarding the conditions of exercising prosecution and the modalities of recourse to mutual assistance.[64]

[6. A State Party shall inform the Secretary-General of the establishment of jurisdiction under paragraph 2 of this article.][65]

Article 10
Extradition[66]

1. This article shall apply to the offences covered by this Convention [offences established in article(s) ...].[67]

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.[68]

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it [shall][69] [may] consider this Convention as the legal basis for extradition in respect of

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[63] Some delegations proposed the deletion of this paragraph on the grounds that it could allow the assertion of extraterritorial jurisdiction. Other delegations pointed out that the paragraph was based on language contained in the 1988 Convention (article 4, paragraph 3).

[64] It was suggested that there should be provision for the settlement of disputes over jurisdiction. Several delegations suggested that this paragraph required clarification. One delegation proposed that "coordinate their actions" be amended to read "cooperate". Other delegations were of the view that the language of this paragraph was too obligatory and should be modified.

[65] One delegation noted that this paragraph should be clarified in respect of which State Party has the notification obligation, and under what circumstances.

[66] This article brings together articles 10-13 in document A/AC.254/4 and is based on a proposal submitted by France and Sweden (A/AC.254/5) and resubmitted in an amended form during the first session of the Ad Hoc Committee.

The text in brackets in this article was proposed during the discussion at the first session of the Ad Hoc Committee.

One delegation noted that this article did not sufficiently take into account the principle of *aut dedere aut judicare*, in particular in respect of the establishment of jurisdiction.

One delegation emphasized the importance of ensuring procedural safeguards and suggested that either a separate paragraph should deal with that issue or all relevant paragraphs should refer to "fundamental legal principles".

[67] One delegation proposed that the scope of this article be limited to offences punishable by one year or more of imprisonment.

[68] One delegation noted the need for a paragraph on the application of the principle of double criminality to extradition cases.

[69] One delegation stated that this provision could be mandatory only if the Convention contained provisions outlining a detailed extradition regime.

any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his or her gender, race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.[70]

7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.[71] [States Parties, subject to their domestic legislation, shall consider simplifying extradition of consenting persons who waive formal extradition proceedings, by allowing direct transmission of extradition requests between appropriate ministries.][72]

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought

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[70] Some delegations noted that the use of such ambiguous terms as "substantial" or "cause prejudice" in this provision could increase the number of refusals to extradite and suggested that the paragraph be clarified, for example, by establishing the criteria for the assessment of such issues. Some delegations expressed their preference for the list of grounds for refusal provided in article 10, paragraph 8, option 2, in document A/AC.254/4.

Some delegations suggested that a request for extradition could be refused if the offence in question was punishable by capital punishment in the requesting State. One delegation opposed such a provision and noted that paragraph 5, on the statutory conditions for extradition, would be sufficient.

One delegation noted that the fact that an offender was sentenced *in absentia* should not as such be grounds for refusal if the fundamental legal rights of the defendant had not been violated. That delegation offered to prepare a proposal to that effect.

Regarding paragraph 6, the Office of the United Nations High Commissioner for Refugees (UNHCR) recommended in document A/AC.254/L.10 that the wording be amended to "Extradition shall not be granted if, from the circumstances of the case, it can be inferred that persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion is involved ...".

UNHCR further requested that a paragraph be incorporated into the Convention that would prohibit the extradition for the purposes of the Convention in cases of "political offences". UNHCR suggested the following wording: "Extradition shall not be granted if the offence in respect of which it is requested is regarded by the requested Party as a political offence, an offence related thereto, or an ordinary criminal offence prosecuted for political reasons."

One delegation noted that it was prepared to allow such an exception, but not in the case of heinous offences.

[71] Some delegations expressed their concern that this paragraph might lead to violations of the fundamental legal rights of the defendant.

[72] The text in brackets was retained from the original document (A/AC.254/4). The text was omitted in the resubmitted proposal by France and Sweden.

and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

9. (a) The State Party in the territory of which the offender or the alleged offender is found shall, in cases where this Convention applies, if it does not extradite that person [for the purpose of prosecution][73], be obliged, upon request of the State Party seeking extradition, whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, [subject to the condition of double criminality,] through proceedings in accordance with the laws of that State[74]. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State;[75]

(b) Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in subparagraph (a).

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits[76] and in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

11. Any person regarding whom proceedings are being carried out in connection with any of the offences covered by this Convention shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.[77]

13. States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their country of persons sentenced to imprisonment or other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

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[73] One delegation noted that the element of refusal of extradition solely on the basis of the nationality of the alleged offender should be retained.

[74] Several delegations were of the view that the principle *aut dedere aut judicare* should also be applicable in cases of refusal of extradition because of the existence of the death penalty in the requesting State.

[75] One delegation proposed the deletion of the last sentence of this paragraph.

[76] One delegation noted that this paragraph required clarification as to what procedure should be followed if the law did not regulate the matter.

[77] One delegation suggested that this issue was already covered by paragraphs 3 and 4 and therefore it proposed the deletion of this paragraph.

[14. States Parties shall designate an authority, or when necessary authorities,[78] which shall have the responsibility and power to execute requests for extradition or to transmit them to the competent authorities for execution. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for extradition and any communication thereto shall be effected between the authorities designated by the Parties.[79] This requirement shall be without prejudice to the right of a Party to require that such requests and communications be addressed to it through the diplomatic channel.][80]

[*Articles 11, 12 and 13 were merged into new article 10*][81]

Article 14
Mutual legal assistance[82]

1. States Parties shall afford one another the widest measure of mutual legal assistance, within the conditions prescribed by the domestic legislation[83] on legal assistance[84] in investigations, prosecutions and judicial proceedings in relation to an offence established in article(s) [...] [*alternatively*: to an offence covered by this

[78] Several delegations noted that this provision was based on the corresponding provision in the 1988 Convention, but that in the latter the provision concerned mutual assistance. They noted that the use of central authorities instead of the diplomatic channels for the purpose of extradition, as well as the designation of several authorities for that purpose, might be problematic.

[79] Several delegations proposed that reference be made to the possibility of using modern means of communication in the transmission of requests. One delegation proposed that, if any provisions were included in the Convention on the consideration of extradition, the corresponding article in the Model Treaty on Extradition (General Assembly resolution 45/116, annex, of 14 December 1990) should be used.

Two delegations proposed that the issue of interim arrest in anticipation of extradition be noted. Another delegation was of the view that the matter was sufficiently well covered in current extradition practice.

[80] Several delegations supported the transfer of this paragraph to the present article from a separate article that had appeared in document A/AC.254/4. Some delegations, however, were of the view that it should be combined with the corresponding provision on central authorities in article 14, Mutual legal assistance, and be placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on these issues. One delegation was of the view that this separate article should more generally include provisions that were common to all forms of international judicial cooperation.

[81] On the deletion of article 13, see the previous footnote.

[82] One delegation noted that it would prepare a proposal regarding the amendment of this article for the second session of the Ad Hoc Committee.

Several delegations proposed that the Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, of 14 December 1990) be used as the basis for the drafting of this article.

One delegation proposed that the corresponding provisions in the International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164, annex, of 15 December 1997) be taken as the basis for this article.

[83] One delegation noted that the phrase "within the conditions prescribed by domestic law" overlapped similar phrasing in paragraph 12. The delegation proposed that one single provision be drafted on the relationship with domestic law that would not limit the obligations under the Convention.

[84] At the informal preparatory meeting held in Buenos Aires in 1998, some delegations expressed concern that this provision could limit the obligations under this article. Other delegations felt that the provision should be retained and moved to after the word "shall" in the first line of the paragraph.

Convention][85] and shall exercise flexibility[86] in the execution of requests for such mutual assistance.

2. Mutual assistance to be afforded in accordance with this article may be requested for any of the following purposes:[87]

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures;

(d) Examining objects and sites;

(e) Providing information and evidentiary items;

(f) Providing originals or certified copies of relevant documents and records, including bank, financial, corporate or business records;

(g) Identifying or tracing proceeds, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the appearance of persons in the requesting State;

(i) Any other type of assistance allowed by the law of the requested State.

3. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.[88]

4. Paragraphs 6-21 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If these Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the Parties agree to apply paragraphs 6-21 in lieu thereof.

5. States Parties shall not decline to render mutual legal assistance under this article on the ground of bank secrecy.

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[85] One delegation was of the view that this article should apply only to offences established by the Convention.

[86] At the informal preparatory meeting held in Buenos Aires in 1998, some delegations felt that the term "flexibility" was ambiguous and that a better formulation could be found, as there was agreement that the purpose of the paragraph was to ensure that the article would be interpreted in a manner that would facilitate mutual assistance.

[87] One delegation noted that the wording of this paragraph implied that the list of measures was intended to be exhaustive.

At the informal preparatory meeting held in Buenos Aires in 1998, some delegations felt that article 14 should not create detailed obligations to provide specific forms of mutual assistance. In their view, paragraph 2 could instead read as follows: "States Parties shall carry out their obligations under paragraph 1 in conformity with any treaties on mutual assistance that may exist between them or pursuant to domestic law."

[88] It was suggested at the informal preparatory meeting held in Buenos Aires in 1998 that the substance of this paragraph could be integrated into a more general article on the relationship of the Convention to other bilateral or multilateral treaties.

6. States Parties may not decline to render mutual legal assistance under this article on the ground of absence of dual criminality, unless the assistance required involves the application of coercive measures.[89]

7. States Parties shall[90] [, where not contrary to fundamental legal principles,] adopt measures sufficient to enable a person in the custody of one State Party whose presence in another State Party is requested to give evidence or assist in the investigations to be transferred if the person consents and if the competent authorities of both States agree.[91] Transfer under this paragraph shall not be for the purpose of standing trial. For purposes of this paragraph:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall return the person to the custody of the State from which the person was transferred [as soon as circumstances permit][92] or as otherwise agreed by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence imposed in the State from which he or she was transferred for time served in the custody of the State to which he or she was transferred.

8. States Parties shall designate a central authority or, when necessary, central authorities[93] which shall have the responsibility and power to execute requests for mutual legal assistance or to transmit them to the competent authorities for execution.[94] Central authorities shall play an active role in ensuring the speedy execution of requests, controlling quality and setting priorities. The Secretary-General shall be notified of the authority or authorities designated for this purpose. Transmission of requests for mutual legal assistance and any communication related thereto shall be effected between the authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through the diplomatic channel and, in urgent circumstances, where the Parties agree, through channels of the International Criminal Police Organization, if possible.[95]

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[89] One delegation proposed the deletion of this paragraph. Another delegation noted that the connection between this paragraph and paragraph 16 should be reviewed.

[90] One delegation was of the view that the word "shall" should be replaced with the word "may".

[91] One delegation proposed that paragraph 20 should immediately follow this paragraph.

[92] One delegation proposed the deletion of the expression "as soon as circumstances permit".

[93] One delegation proposed the elimination of the words "or, when necessary, central authorities".

[94] At the informal preparatory meeting held in Buenos Aires in 1998, it was noted that this provision might cause difficulties in respect of territories that did not have full sovereignty.

[95] Some delegations were of the view that this paragraph should be combined with the corresponding provision on central authorities in article 10, on extradition, and be placed in a separate article entitled "Transmission of requests for extradition and mutual assistance", to precede the articles on these issues. One delegation was of the view that the separate article should more generally include provisions that were common to all forms of international judicial cooperation.

9. Requests shall be made in writing or by any means capable of producing a written record[96] in a language acceptable to the requested State Party. The Secretary-General shall be notified of the language or languages acceptable to each Party. In urgent circumstances, and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

10. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or proceeding to which the request relates, and the name and the functions of the authority conducting such investigation, prosecution or proceeding;

(c) A summary of the relevant facts, except in respect of requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned;

(f) The purpose for which the evidence, information or action is sought.

11. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

12. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested Party and where possible, in accordance with the procedures specified in the request.[97]

13. Wherever possible and consistent with fundamental principles of domestic law, States Parties shall permit testimony, statements or other forms of assistance to be given via video link or other modern means of communication and shall ensure that perjury committed under such circumstances is a criminal offence.[98]

14. The requesting State Party shall not transmit nor use information or evidence furnished by the requested Party for investigations, prosecutions or proceedings other than those stated in the request without the prior consent of the requested Party.[99]

15. The requesting State Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party.

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[96] At the informal preparatory meeting held in Buenos Aires in 1998, it was agreed that this expression should be deemed to include the submission of a request by modern means of communications, under circumstances that provide an indication of authenticity.

[97] One delegation noted that this paragraph and paragraph 1 overlapped in part.

[98] Several delegations expressed concern about this paragraph. Some delegations noted that, under their legal systems, defendants in criminal cases who made false statements could not be convicted of perjury.

[99] One delegation proposed that the use of evidence be restricted only when the requested State so indicated. One delegation proposed that the paragraph be deleted.

16. Mutual legal assistance may be refused:[100]

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence,[101] had it been subject to investigation, prosecution or proceedings under their own jurisdiction;[102]

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted;[103]

(e) If the offence to which the request relates would not be an offence in the context of criminal organization if committed within its jurisdiction.[104]

17. For the purpose of cooperation under this article, the offences covered by this Convention shall not be considered fiscal offences or political offences[105] or regarded as politically motivated, without prejudice to the constitutional limitations and the fundamental domestic law of the States Parties.

18. Reasons shall be given for any refusal of mutual legal assistance.

19. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or proceeding. In such a case, the requested Party shall consult with the requesting Party to determine if the assistance can still be given subject to such terms and conditions as the requested Party deems necessary.

20. A witness, expert or other person who consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in that territory in respect of acts, omissions or convictions prior to his departure from the territory of the requested Party.[106] Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days, or for any period agreed upon by the Parties, from the date on

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[100] One delegation proposed as an additional ground for refusal the fact that the requested State reasonably believed that the offence in question did not involve organized crime.

At the informal preparatory meeting held in Buenos Aires in 1998, it was suggested that other grounds for refusal might be required. One possible additional ground might be a "discrimination clause" as in article 6, paragraph 6, of the 1988 Convention. Another ground might be a "political offence", in which case paragraph 17 would require re-examination.

[101] One delegation noted that the phrase "similar offence" required clarification.

[102] Some delegations expressed reservations about this subparagraph. One delegation proposed that the subparagraph be deleted, since the issue would nonetheless be regulated by the subparagraph that followed.

[103] Some delegations regarded this ground for refusal as overly broad.

[104] Some delegations proposed that this subparagraph be deleted.

[105] One delegation was of the view that the "political offence" exception could be discretionary except in certain heinous cases. Another delegation proposed the deletion of the reference to political offences.

[106] One delegation expressed concern about cases where a dangerous offender might deliberately utilize this provision in order to evade justice.

which he has been officially informed that his presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory or, having left it, has returned of his own free will.[107]

21. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.[108]

22. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.[109]

Article 15
Special investigative techniques

1. If permitted by the basic principles of their respective domestic legal systems,[110] States Parties shall take the necessary measures [, within their possibilities,] to provide a legal basis for[111] the [appropriate] use of special investigative techniques, such as controlled delivery, surveillance, including electronic surveillance, and undercover operations for the purpose of gathering evidence and taking legal action against persons involved in an offence established in article(s) [...] [*alternatively*: in an offence covered by this Convention].[112]

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[107] At the informal preparatory meeting held in Buenos Aires in 1998, some delegations thought a degree of discretion could be provided to the requesting State in determining whether to provide safe conduct. One delegation expressed a reservation on this paragraph.

[108] One delegation noted that the wording of this paragraph required clarification.

[109] One delegation noted that the wording of this paragraph required clarification. Another delegation proposed that the paragraph be deleted.

[110] This formulation, as used also in the 1988 Convention, was supported by several delegations. Some delegations proposed the alternative formulation of "If permitted by domestic law, ...".

In general, on the applicability of the language of the 1988 Convention to the drafting of the present article, one delegation cautioned that article 11 of the 1988 Convention focused on the use of one special investigative technique, controlled delivery, at the international level, while the present article examined the use of special investigative techniques at both the national level and the international level.

[111] Some delegations proposed that "to provide a legal basis for" be amended to read "to allow for the appropriate use of". One delegation proposed that "to provide a legal basis for" be amended to read " to provide a lawful basis for".

[112] As noted in the footnote to article 4 *bis*, several delegations noted the need to define these concepts. It was also suggested by some delegations that since the list of measures in this paragraph was not exhaustive and new investigative measures might be developed in response to the evolution of organized crime and of technology, the definitions might also be inserted into the *travaux préparatoires*.

One delegation proposed the addition of "interception of electronic messages" as a special investigatory message. However, several delegations noted that not only was that issue evolving rapidly, but it was also particularly complex and sensitive and therefore should perhaps not be dealt with in the context of the Convention.

Several delegations emphasized the possible need for providing technical assistance to developing countries to support the use of special investigative techniques, as noted in article 21, subparagraph 1 (g). Some delegations suggested that a provision on technical cooperation be inserted in the present article.

2. States Parties shall consider extending the use of the special investigative techniques referred to in paragraph 1 of this article at the international level, on the basis of agreements or arrangements.

[2 *bis*. States Parties participating in this type of investigation at the international level shall scrupulously respect the terms of reference agreed upon with the competent authorities of the States Parties in which these activities are carried out and shall fully respect the sovereignty of such States.][113]

3. Decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.[114]

4. Decisions to use controlled delivery at the international level may include methods such as intercepting and allowing the goods to continue intact or removed or replaced in whole or in part.

Article 16
Transfer of proceedings[115]

States Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where more jurisdictions are involved, with a view to concentrating the prosecution.

[113] This paragraph was submitted by the delegation of Mexico and was not discussed by the Ad Hoc Committee at its first session.

[114] One delegation emphasized the need to respect the territorial integrity and sovereignty of States Parties.

One delegation proposed that the present provision specify, in the same manner as article 14, paragraph 21, the presumptive allocation of the financial burden resulting from the use of special investigative measures at the international level.

[115] At the informal preparatory meeting held in Buenos Aires in 1998, some delegations felt that the subject matter of this article could be best treated under article 9, paragraph 5, on jurisdiction, or in connection with article 10, paragraph 9 (as amended by the Ad Hoc Committee at its first session), regarding domestic prosecution in lieu of extradition of nationals.

Article 17
[Establishment of criminal record][116]

Each State Party [may] take legislative measures to [take into consideration] the previous foreign conviction[117] for an offence established in article(s) [...] [*alternatively*: for an offence covered by this Convention] for the purpose of establishing the criminal history of the alleged offender.

Article 18
Protection of witnesses and victims[118]

1. Each State Party shall[119] adopt measures to provide effective and appropriate protection from potential retaliation or intimidation for witnesses in its criminal proceedings[120] who agree to give testimony concerning the crimes covered by this Convention and, as appropriate, for their relatives and other persons close to them.[121]

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[116] This article was the subject of extensive discussion at the first session of the Ad Hoc Committee.

While it was agreed that, for purposes of investigation, prosecution and adjudication, information on the criminal history of a suspect or defendant might be requested, there were difficulties in the formal recognition of foreign judgements. No support was voiced at the first session of the Ad Hoc Committee for the possibility of taking foreign convictions into account in subsequent sentencing proceedings, although there had been support for that idea at the informal preparatory meeting held in Buenos Aires in 1998.

One delegation noted the need for a safeguard clause, or the insertion of a phrase such as "in accordance with domestic law".

In connection with this article, three possible solutions were envisaged by some delegations: (a) on the basis of article 18 *bis*, on measures to enhance cooperation with law enforcement authorities, information could be exchanged on criminal history; (b) on the basis of article 14, on mutual legal assistance, States could undertake to respond to requests related to prior convictions of an individual; and (c) the article could be redrafted in a more discretionary manner to read "Each State Party may adopt ..." (as has been done in the present draft).

Several delegations proposed that the article be deleted.

[117] Several delegations noted the need to define the concept of "convictions". One delegation raised the issue of convictions *in absentia* and noted that different legal systems imposed a variety of sanctions through different procedures. One delegation noted that the provision should specify whether the convictions in question should be legally final or should include convictions that were still subject to appeal.

Two delegations proposed that information on the criminal history of the alleged offender include acquittals.

One delegation proposed that provisions be included in the Convention on the exchange of information on criminal, civil and administrative sanctions imposed against corporate bodies or their officers.

One delegation noted that consideration should be given to include provisions on how information on criminal history should be obtained from other Member States.

[118] The drafting of this article requires further consideration.

[119] Several delegations noted that the use of the categorical "shall" in this paragraph was inappropriate, as the provision of full protection might be practically and financially impossible.

[120] Several delegations noted that the protection should be provided before, during and after the criminal proceedings. One delegation noted that the protection should extend to victims and witnesses involved in proceedings in other States.

[121] This term is intended to cover persons who may be subject to danger by virtue of a particularly close relationship with the witness, but who are not relatives.

One delegation noted that the term required clarification.

Several delegations proposed that the scope of this article be expanded to include not only all persons assisting the authorities in investigation, prosecution and adjudication, but also criminal justice personnel and, for example, the representatives and legal counsel of the victim.

2. The measures envisaged in paragraph 1 [may] include [, among others,] [, without affecting the right of the defendant to due process]:[122]

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them, and to permit, where appropriate, non-disclosure or limitations on disclosure of information concerning the identity and whereabouts of such persons;[123]

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology[124] or other means in a manner not prejudicial to the rights of the defence.[125]

3. States Parties [may] consider entering into arrangements with other States for the relocation of persons described in paragraph 1.

4. States Parties shall take measures to provide assistance to victims[126] of crimes covered by this Convention, enable views and concerns of victims to be presented and considered at appropriate stages of the criminal proceedings against the offenders in a manner not prejudicial to the rights of the defence, and establish procedures relating to restitution by offenders to victims of such crimes.

Article 18 bis

Measures to enhance cooperation with law enforcement authorities

1. States Parties shall promote appropriate[127] methods of obtaining information and testimony from persons who are willing to cooperate in the investigation and prosecution of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] and shall, as appropriate, assist each other in promoting such cooperation.

2. Each State Party shall [consider the possibility of providing, in accordance with fundamental legal principles, its prosecutorial and judicial authorities with discretion in order to encourage the cooperation referred to in paragraph 1 of this article, for example

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[122] Several delegations noted that some of the measures noted in this paragraph might be in conflict with legal safeguards protecting the defendant. It was also noted that the differences between legal systems should be reflected in the drafting of this paragraph.

[123] Some delegations noted that this might run counter to legal safeguards enjoyed by the defendant.

[124] One delegation suggested that this concept be clarified, in particular if measures in addition to video links were encompassed. One delegation proposed that the term be deleted.

[125] One delegation expressed the view that the text should make clear that these measures need to be consistent with the right of the defence to cross-examination.

[126] Several delegations suggested that issues related to restitution to victims and victim assistance be dealt with in a separate article. One delegation proposed that this separate article could deal in general with human rights issues. Some delegations noted that the terms "assistance", "views and concerns" and "restitution" were ambiguous.

Two delegations requested that specific reference be made of the victim categories of minors, migrants and refugees.

[127] One delegation noted that this paragraph, in particular the use of the word "appropriate", required clarification.

by providing] [provide for] the possibility, in appropriate cases, of [either or both of the following]:[128]

(a) Granting immunity from prosecution to a person who cooperates substantially with law enforcement authorities in the investigation and prosecution of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention];[129]

(b) Considering the provision by an accused person of substantial cooperation in the investigation and prosecution of an offence established in article(s) [...] [*alternatively*: of an offence covered by this Convention] as a mitigating factor in determining the person's punishment.

3. Protection of such persons shall be as provided for in article 18.

Option 1[130]

4. States Parties shall consider entering into arrangements, subject to their national laws, concerning immunities on non-prosecution or reduced penalties in respect of witnesses [from] [resident in] one State whose testimony is required in another State.

Option 2[131]

4. In principle, the benefit of immunity granted to a state witness shall have effect only in the State Party that granted such immunity. If a second State Party acquires the testimony given by a state witness, such testimony may be used against persons other than the person so cooperating. The State utilizing such testimony shall be required to grant the benefit of immunity to the state witness and may consequently not use such testimony or any evidence directly resulting therefrom against such person. Two or more States may jointly grant benefits of immunity when a transnational [criminal] organization is under investigation.

5. A State Party may grant benefits to state witnesses in respect of offences committed in the territory of another State Party, and the cooperation of state

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[128] One delegation proposed that subparagraphs (a) and (b) of this paragraph be made facultative, by beginning the paragraph with "In particular, each State Party shall, in accordance with fundamental legal principles, [ensure] [consider the possibility of ensuring] that its domestic legal framework permits the possibility, in appropriate cases, of ..."

One delegation proposed that this paragraph be reformulated as a listing of various measures designed to promote cooperation with law enforcement, including not only the immunity referred to in subparagraph (a) and the mitigation referred to in subparagraph (b), but also the offering of rewards for cooperation and the offering of victim protection arrangements.

[129] Several delegations noted that their legal system did not allow for the possibility of granting immunity, and some called for the deletion of this subparagraph. One delegation noted the dangers to the course of justice that might arise if the authorities had discretionary powers to grant immunity.

One delegation noted that the scope of immunity required clarification in respect of whether it included only the offence under investigation, or any offence committed by the person in question. In either case, accordig to the delegation, this might have an impact on the rights of the victim.

[130] *Rapporteur's note*: Option 1 represents an effort to capture the comments of some delegations at the first session of the Ad Hoc Committee. Other delegations were of the view that the paragraph was not necessary and should be deleted.

[131] Several delegations noted that paragraphs 4 and 5 in option 2 required clarification, and some delegations proposed that the substance be transferred to article 14, on mutual legal assistance. One delegation proposed that consideration be given to integrating article 18 *bis* with article 18. Several delegations proposed that the two paragraphs in option 2 be deleted. One delegation proposed that consideration be given to the protection of the identity and image of the person in question.

witnesses[132] may be evaluated with a view to granting them immunity or reduced penalties in conformity with the laws of the first-mentioned State. When a state witness is required to testify before the court of another country, States shall facilitate his or her transfer to the State requiring such testimony. This privilege shall override the claim of a third State to impose punishment.

Article 19
Law enforcement cooperation[133]

1. States Parties shall consider entering into bilateral and multilateral agreements or arrangements on direct cooperation between their law enforcement agencies.

2. States Parties shall [endeavour to] cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences established in article(s) [...] [*alternatively*: the offences covered by this Convention]. Each State Party shall,[134] in particular, adopt effective measures:

(a) To establish and maintain channels of communication between their competent authorities, agencies and services, including the designation, where appropriate, of a central authority or authorities,[135] to facilitate the secure and rapid exchange of information concerning all aspects of the offences established in this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with one another in conducting inquiries, with respect to offences established in this Convention, concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in the offences established in this Convention;

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[132] One delegation noted that this paragraph required clarification, since conceptually a state witness was not a defendant and thus did not need to be granted immunity.

[133] At the first session of the Ad Hoc Committee, emphasis was placed on distinguishing between mutual legal assistance, considered in article 14, and law enforcement cooperation. One delegation proposed that, since articles 15, 18, 18 *bis* and 19 dealt with issues that were conceptually different from articles 16 and 17, those four articles should be brought together.

One delegation noted the need to train also diplomatic and consular staff in the areas covered by article 19.

The majority of delegations agreed on the importance of article 19 and the need to facilitate law enforcement cooperation. In addition, it was noted that much of the language in the article came directly from the 1988 Convention. It was also noted that softening the provisions would be a step backwards from that instrument.

[134] The delegations of several States noted that the implementation of some of the measures foreseen in the subparagraphs of paragraph 2, such as in subparagraph (e), on liaison officers, should be optional and not obligatory.

[135] Many delegations were of the view that the reference to central authorities should be deleted or placed in brackets, as that concept more properly belonged to mutual legal assistance (article 14). In this connection, it was noted that the provision of the 1988 Convention, on which article 19 was based, did not include a reference to central authorities.

One delegation proposed that law enforcement cooperation take place only through central authorities. Other delegations noted that the designation of the authority or authorities responsible for law enforcement cooperation should depend on, among other factors, the administrative structure of the State. One delegation emphasized the importance of having a contact point in order to pursue the possibilities of law enforcement cooperation.

(ii) The movement of proceeds or property derived from the commission of such offences;

(iii) The movement of instrumentalities used or intended for use in the commission of such offences;

(c) In appropriate cases and if not contrary to domestic law, to establish joint teams, taking into account the need to protect the security of persons and operations, in order to carry out the provisions of this paragraph. Officials of any State Party participating in such teams shall act as authorized by the appropriate[136] authorities of the Party in whose territory the operation is to take place; in all such cases, the States Parties involved shall ensure that the sovereignty of the Party in whose territory the operation is to take place is fully respected;[137]

(d) To provide, when appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(e) To facilitate effective coordination between their competent agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral arrangements or agreements between the States Parties concerned, the posting of liaison officers.[138]

3. States Parties shall cooperate closely in preventing and controlling the offences established in article(s) [...] [*alternatively*: the offences covered by this Convention]. In particular, they shall, in accordance with their domestic laws or pursuant to bilateral or multilateral agreements or arrangements:[139]

(a) Take all appropriate measures to prevent preparation in their respective territories for the commission of those offences within or outside their territories;

(b) Exchange information in accordance with their national law and coordinate administrative and other measures taken as appropriate to prevent the commission of offences established in article(s) [...] [*alternatively*: of offences covered by this Convention].[140]

[4. States Parties shall:[141]

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[136] One delegation proposed the insertion of the word "central". Another delegation opposed it and noted the need to take into consideration the administrative structure of the State when deciding on which authority should be charged with the responsibility referred to in the present paragraph.

[137] One delegation expressed concerns regarding this paragraph. Some other delegations emphasized in this connection the importance of respecting the sovereignty and territorial integrity of States.

[138] One delegation suggested that the concept and role of "liaison officers" be clarified. Another State proposed adding to the end of this paragraph the words "... as well as, where appropriate, the extension and expansion of the competence of existing liaison officers".

[139] Two delegations proposed that paragraph 3 be transferred to article 22, on prevention.

[140] One delegation noted the need to ensure the confidentiality of any information exchanged on the basis of this subparagraph.

[141] Some delegations stressed the need for further consideration of this paragraph, and one delegation proposed its deletion, on the grounds that it imposed significant financial obligations on States Parties. It was suggested that the paragraph should be reformulated so that the measures envisaged would be discretionary.

(a) Designate knowledgeable law enforcement personnel to be available [on a 24-hour basis][142] to respond to transnational organized crime committed through the use of computers, telecommunications networks and other forms of modern technology;[143] and

(b) Review their domestic legislation to ensure that such abuses are adequately addressed.]

Article 20

Collection and [exchange] of information on organized crime[144]

1. States Parties shall consider developing and sharing analytical expertise concerning organized crime activities. In this connection, common definitions, standards and methodologies shall be applied as appropriate.

2. Each of the States Parties shall consider [, with the support of the scientific community,][145] analysing trends in organized crime in its territory, as well as the circumstances in which organized crime can operate, the professional groups involved and the communications technologies.

3. States Parties shall consider monitoring their policies and actual measures to prevent and combat organized crime and shall make assessments of their effectiveness and efficiency.[146]

4. The Secretary-General, with the assistance of the United Nations Interregional Crime and Justice Research Institute and the other institutes in the United Nations Crime Prevention and Criminal Justice Programme network, shall undertake to collect and analyse public information and research findings concerning organized crime, prepare overviews of global trends in organized crime and prepare inventories of policies and measures to prevent and control organized crime.[147]

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[142] One delegation proposed the deletion of the words appearing in brackets.

[143] One delegation noted that these measures should be considered also in connection with other types of offences.

[144] Some delegations proposed that this article should deal also with the establishment of international data banks and with the work of the International Criminal Police Organization and corresponding regional arrangements in this connection. One delegation, speaking on behalf of a regional group, stressed the need to establish international data banks that would respond to the needs of developing countries, since the establishment of national data banks would impose a financial obligation on States Parties. The same delegation noted the need to have a linkage with national financial investigative units established to investigate money-laundering.

One delegation noted the need to redraft this article to specify both the objectives and the mechanisms to be used. It was also noted that this article dealt with analytical data, not operational data.

[145] One delegation questioned the inclusion of the phrase appearing in brackets. It was noted in response that the phrase was intended to emphasize the importance utilizing academic research to improve the quality and effectiveness of the response to organized crime.

[146] One delegation proposed that paragraphs 3 and 4 be transferred to article 23.

[147] The possibility of transferring this paragraph to article 23 was to be considered. One delegation proposed the insertion of the words "and other scientific and specialized bodies, as well as regional bodies," after the words "Programme network".

One delegation drew attention to the financial implications of this paragraph and noted that the style of the paragraph would be more appropriate in a resolution than in a Convention.

Two delegations proposed the inclusion of a paragraph on the responsibility of States Parties to provide the Secretary-General with the information referred to in this paragraph.

Article 21
Training and technical assistance[148]

1. Each State Party shall, to the extent necessary, initiate, develop or improve a specific training programme for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention and control of the offences covered by this Convention. Such programmes may include secondments and exchanges. Such programmes shall deal, in particular, with the following:[149]

(a) Methods used in the prevention, detection and control[150] of the offences established in this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences established in this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of import and export of contraband;

(d) Detection and monitoring of the movements of proceeds and property derived from offences covered by this Convention, instrumentalities used in the commission of such offences and methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities, and other methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating transnational organized crime committed through the use of computers, telecommunications networks or other forms of modern technology [; and

(i) Methods used in the protection of victims and witnesses].

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[148] One delegation noted that this article should also contain a paragraph on the role of the United Nations in the provision of training and technical assistance.

One delegation, speaking on behalf of the States Members of the United Nations that are members of the Group of 77 and China, stressed the need for an article on the provision of financial assistance to developing countries and undertook to provide a text for the second session of the Ad Hoc Committee. The delegation also stressed the need to include in the Convention an article on international development cooperation.

One delegation noted that, although the wording of this paragraph was based on the 1988 Convention, the scope of that convention was more limited. Therefore, consideration should be given to the appropriateness of this wording in a convention on transnational organized crime, which would have a considerably broader scope.

One delegation noted the need to draw the attention of Governments and regional cooperation agencies to the importance of the issues dealt with in this article.

[149] It was suggested that the Ad Hoc Committee might wish to consider the establishment, subject to the availability of extrabudgetary resources, of a database that would include training materials as well as information concerning available training programmes. It was also noted that this task could be carried out by an institute in the United Nations Crime Prevention and Criminal Justice Programme network.

[150] One delegation expressed concern about the appropriateness of this term in this context.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and, to this end, shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote other techniques for mutual education that will facilitate extradition and mutual legal assistance. Such techniques may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. States Parties may conclude bilateral or multilateral agreements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by the present Convention to be effective and for the prevention and control of transnational organized crime.

5. In the case of existing bilateral and multilateral agreements, States Parties shall strengthen [, to the extent necessary,] efforts to maximize operational and training activities within the International Criminal Police Organization [and the World Customs Organization] and within other relevant bilateral and multilateral agreements or arrangements.

Article 22[151]
Prevention at the national level

1. With a view to reducing existing or future opportunities for criminal organizations to participate in legal markets while acquiring illegal gains through activities such as illegal trafficking in motor vehicles, firearms, women and children and immigrants, States Parties shall take appropriate legislative and administrative measures, in particular:[152]

(a) To prevent the misuse of legal persons by organized crime through:

(i) The collection and storage of information on legal persons and natural persons involved in their establishment, management and funding;[153]

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[151] Proposed by the delegation of the Netherlands at the first session of the Ad Hoc Committee (A/AC.254/L.3).

[152] Many delegations were of the view that the language of this paragraph is too mandatory. Those delegations also expressed concern about the limited scope of the provision, especially with regard to the specific reference to offences, in view of the ongoing consideration of the scope of the Convention and the additional international legal instruments.

One delegation was of the opinion that the first paragraph of the original text should be retained. That paragraph was as follows: "1. States Parties shall consider taking steps to reduce to the extent possible existing social, legal, [cultural], administrative, technical [or any other] opportunities for criminal organizations to commit [profitable crimes] [any punishable offence] and to alleviate the circumstances that make socially marginalized groups vulnerable to the prospect of a criminal career." The words "or any other" and "any punishable offence" were suggested by that delegation. Other delegations recommended the addition of the word "cultural".

One delegation was of the view that the article should cover not only illegal markets, but also the risk posed by organized criminal groups to legal markets by virtue of their efforts to infiltrate them.

[153] One delegation expressed concern about the protection of personal data and information.

(ii) The deprivation of the right of persons convicted for organized criminal activities to act as directors of legal persons incorporated in their jurisdiction;[154]

(iii) The establishment of national registers of persons disqualified as directors of legal persons; and

(iv) The exchange of the types of information referred to under subparagraphs (a) (i) and (iii) of this paragraph with competent authorities of other States Parties;

(b) To strengthen cooperation between public and relevant private organizations, including industries;[155]

(c) To promote the development of standards and procedures designed to safeguard the integrity of public and private organizations, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants; and

(d) To exclude from participation in tender procedures conducted by public authorities applicants[156] who have been convicted for offences connected with organized crime and to deny subsidies or licences to such applicants.

2. With a view to reducing existing or future opportunities for criminal organizations to recruit new members from vulnerable groups of the population[157], States Parties shall establish adequate prevention programmes.[158]

3. With a view to reducing recidivism, States Parties shall assist in reintegrating into society, for example through vocational and educational training, persons convicted of having engaged in organized criminal activities[159]

4. Each of the States Parties shall consider:

(a) Undertaking an analysis of patterns of and trends in transnational organized crime by systematically gathering information on organized crime within its territory;

(b) Developing national projects[160] aimed at the prevention of transnational organized crime; and

(c) Establishing and promoting best practices to prevent transnational organized crime.

[5. States Parties shall undertake to ensure that their organs and services, in particular their security services, under no circumstances cooperate with criminal

[154] Many delegations thought that the provision of this and the subsequent subparagraphs were too far-reaching. Several delegations expressed the view that measures such as these should be linked with the gravity of the offence and the size of the legal person and that the exclusion should be limited in time. Other delegations advocated the retention of these measures, supplemented perhaps with the necessary safeguard clauses.

[155] For example, cooperation between a law enforcement agency and the car industry and insurance companies to prevent the theft of motor vehicles.

[156] Natural persons as well as legal persons.

[157] Several delegations were of the view that caution was required in dealing with the issue of vulnerable groups.

[158] Several delegations were of the view that this paragraph should be more specific with regard to the measures to be taken, especially in view of its mandatory nature. One delegation noted that the measures should include cultural programmes and the use of the media, including the cinema.

[159] In particular, young or low-ranking participants in criminal organizations.

[160] Either pilot or field projects.

organizations in any way other than using individual informers to fight the types of crime in which such organizations engage.][161]

Article 22 bis[162]
Prevention at the international level

States Parties shall collaborate with each other and relevant international organizations in promoting and developing the measures referred to in article 22 of this Convention, in particular through:

(a) The nomination of a focal point;

(b) The exchange of information on patterns of and trends in transnational organized crime and on best practices for the prevention of transnational organized crime; and

(c) The participation in international projects[163] aimed at the prevention of transnational organized crime.

Article 22 ter[164]
Communications from States Parties

In order to promote progress in the implementation of the Convention, each of the States Parties shall communicate, within [...] months of the entry into force of the Convention and periodically thereafter, information on its policies and measures to implement the Convention. This information shall be reviewed by the Conference of the Parties to the Convention at its first session and periodically thereafter, in accordance with article 23 of this Convention.

Option 1

Article 23
Role of the United Nations and other relevant organizations[165]

1. For the purpose of examining the progress made by States Parties in achieving the fulfilment of the obligations undertaken in the present Convention, these States will provide periodic reports to the Commission on Crime Prevention and Criminal Justice, which will carry out the functions hereinafter provided.

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[161] At the first meeting of the Ad Hoc Committee, most delegations were of the view that this paragraph should be deleted. Two delegations expressed the wish to retain this paragraph.

[162] A number of delegations were of the view that this provision required clarification and that it was too obligatory in nature.

[163] Either pilot or field projects.

[164] Proposed by the delegation of Austria at the first session of the Ad Hoc Committee (for an explanatory note, see the non-paper submitted by the delegation of Austria (A/AC.254/5/Add.3); see also footnotes 169 and 170 below).

[165] A number of delegations were of the view that option 1 would not provide for an effective monitoring mechanism. Some delegations also questioned the appropriateness of reporting to the Commission on Crime Prevention and Criminal Justice, whose membership might not coincide with the signatories to the Convention. Furthermore, it was suggested that a monitoring or follow-up mechanism would require a thorough discussion of issues such as confidentiality in respect of any reports containing sensitive operational information and involvement of non-governmental organizations.

2. States Parties undertake to provide such reports within two years of the entry into force of the Convention for the State concerned, and thereafter every five years.

3. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Commission with a comprehensive understanding of the implementation of the Convention in the country concerned.

4. A State Party that has submitted a comprehensive initial report to the Commission need not, in its subsequent reports submitted in accordance with paragraph 1 of this article, repeat basic information previously provided.

5. The Commission may request from the States Parties further information relevant to the implementation of the Convention.

6. States Parties shall provide, as appropriate, reports to the Secretary-General on current and emerging organized crime activities in their States,[166] as well as on their experience with preventive measures and control measures.[167]

7. The Commission shall make its recommendations and submit reports on its activities to the Economic and Social Council, in accordance with existing provisions.

8. States Parties shall make their reports widely available to the public in their own countries.[168]

9. In order to foster the effective implementation of the Convention and to encourage international cooperation in the field covered by the Convention:

(a) Intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council and other invited multilateral organizations shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Commission may invite the specialized agencies and other United Nations entities to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Commission shall transmit, as it may consider appropriate, to the intergovernmental and non-governmental organizations, other multilateral organizations and the specialized agencies any reports from the States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Commission's observations and suggestions, if any, on those requests or indications;

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[166] Some delegations felt that it might be difficult for States Parties to provide reports on sensitive ongoing investigations.

[167] It was suggested that provisions might be inserted in this article on the possible role of the United Nations in preparing reports on current and emerging organized criminal activities, as well as on national experience with preventive measures and countermeasures, and in collecting and analysing information and research findings.

[168] A number of delegations thought that public dissemination of reports might not be advisable.

(c) The Commission may recommend to the Economic and Social Council that it request the Secretary-General to undertake on its behalf studies on specific issues relating to the control and prevention of organized crime;

(d) The Commission may make suggestions and general recommendations based on information received pursuant to article(s) [...] of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the Economic and Social Council, together with comments, if any, from the States Parties.

Option 2

Article 23
Monitoring of implementation

1. States Parties shall cooperate in carrying out a programme of systematic monitoring of the implementation of the measures provided for by this Convention to combat organized crime.

2. A committee of the States Parties shall be established for the purpose of carrying out monitoring functions under this article. The Committee shall:

(a) Adopt periodic reports evaluating implementation by States Parties and adopt and issue reports on its own activities;

(b) Promulgate procedures for assessing the level of implementation by States Parties (including with respect to submission of information by the Party being evaluated, the formation of evaluation teams made up of experts from States Parties to visit that Party and preparation of a preliminary evaluation for consid[e]ration by the Committee, and the discussion and adoption of the final evaluation report) and for carrying out its other functions.

3. Meetings of the Committee shall be held at [insert location] once a year or, where circumstances require, in special session. They shall be held in camera.

4. Every effort shall be made to reach decisions by consensus in the Committee. If consensus cannot be reached, decisions on substantive matters must be approved by a two-thirds majority of those States Parties present and voting, an absolute majority of States Parties constituting a quorum, while decisions on procedural matters shall be taken by a simple majority of those States Parties present and voting.

5. Expenses incurred in conjunction with the work of the Committee shall be paid from assessed contributions made by States Parties and voluntary contributions from Governments, international organizations, individuals, corporations and other entities, in accordance with relevant criteria adopted by the Committee.

Option 3[169]

Article 23
Conference of the Parties to the Convention

1. A Conference of the Parties to this Convention is hereby established.

2. The Conference, as the supreme body of this Convention, shall keep under regular review the implementation of the Convention and any legal instruments related to the Convention and shall make, within its mandate, the decisions necessary to promote the effective monitoring and implementation of the Convention. To this end, the Conference shall:

(a) Periodically examine the obligations of the Parties and the institutional arrangements under the Convention, in the light of the objectives of the Convention, the experience gained in its implementation and the evolution of scientific and technological knowledge;

(b) Promote and facilitate the exchange of information on measures adopted by the Parties to counter transnational organized crime;

(c) Assess, on the basis of all information made available to it in accordance with the provisions of the Convention, the implementation of the Convention by the States Parties, the overall effect of the measures taken pursuant to the Convention and the extent to which progress is being made towards the achievement of the objectives of the Convention;[170]

(d) Consider and adopt regular reports on the implementation of the Convention;

(e) Make recommendations on any matters necessary for the implementation of the Convention;

(f) Seek to mobilize financial resources pursuant to articles 21 and 22 of the Convention;

(g) Agree upon and adopt, by consensus, its own rules of procedure and financial rules;

(h) Seek and utilize, where appropriate, the services and cooperation of and information provided by competent international organizations and intergovernmental and non-governmental bodies.

3. The Conference shall adopt its rules of procedure at its first session.

4. The first session of the Conference shall be convened by the Centre for International Crime Prevention of the Secretariat of the United Nations and shall take place not later than one year after the date of entry into force of the Convention. Thereafter, regular sessions of the Conference shall be held every year unless otherwise decided by the Conference.

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[169] Option 3 is a proposal of the delegation of Austria, intended to replace options 1 and 2 on article 23. It was submitted during the first session of the Ad Hoc Committee and preliminarily discussed. The delegation of Austria also submitted explanatory notes on option 3 in a non-paper (A/AC.254/5/Add.3). The proposal consists of new articles 22 *ter*, 23, and 23 *bis* of the Convention.

[170] There is a need for an article on the provision of information by States Parties for the evaluation of the progress made in the implementation of the Convention (see article 22 *ter*).

5. [*Text on the participation of observers to be added*].

Article 23 bis[171]
Secretariat

1. The Centre for International Crime Prevention of the Secretariat of the United Nations shall act as the secretariat of the Convention.

2. The functions of the secretariat shall be:

(a) To make arrangements for sessions of the Conference of the Parties to the Convention and to provide services for those sessions as required;

(b) To compile and submit reports to the Conference;

(c) To facilitate assistance to the Parties, particularly developing country Parties, on request, in the compilation and communication of information required in accordance with the provisions of the Convention;

(d) To prepare reports on its activities and present them to the Conference;

(e) To ensure the necessary coordination with the secretariats of other relevant international bodies;

(f) To assist States Parties, upon request, in analysing patterns and trends in transnational organized crime;

(g) To set up a database of best practices developed by States Parties for the prevention of transnational organized crime;

(h) To establish a network of contact persons from States Parties and, where appropriate, to facilitate the organization of meetings for the contact persons;

(i) To promote and facilitate the organization of seminars and conferences for other national experts on the prevention of transnational organized crime;

(j) To promote or facilitate the development by States Parties of international pilot projects and, where appropriate, to evaluate the pilot projects.[172]

Article 24
Relation with other conventions

Option 1

This Convention shall not prejudice the application of other United Nations conventions on criminal matters.[173]

Option 2

The provisions of the present Convention shall prevail over those of other United Nations conventions dealing with the same matters.

[171] It was noted that the role proposed for the Centre for International Crime Prevention would have significant budgetary implications and would require careful consideration.

[172] Subparagraphs 2 (f)-(j) of this article are based on the version of article 22 proposed by the delegation of the Netherlands (A/AC.254/L.3).

[173] It was observed that this article might also have to address the relationship with bilateral and regional treaties.

Article 25
Settlement of disputes[174]

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months from the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of ratification of or accession to this Convention declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to [the Secretary-General of the United Nations].

Article 26
Signature, ratification, accession and reservations

1. This Convention shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.

4. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.[175]

5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

6. This Convention is subject to accession by any State. The instruments of accession shall be deposited with [the Secretary-General of the United Nations].

[174] It was observed that consideration would need to be given to the 1988 Convention in drawing up this article.

[175] It was suggested that paragraphs 3, 4 and 5 were not appropriate. The observation was also made that in order to ensure that reservations could not be made, an express provision to that effect was required. Otherwise, general international law on treaties (and in particular the Vienna Convention on the Law of Treaties) would nonetheless allow reservations to be made. Other delegations expressed their strong preference for an article that would specifically allow for reservations.

Article 27
Entry into force[176]

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Convention after the deposit of the twentieth instrument of such action, the Convention shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

Article 28
Amendment

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments that they have accepted.

Article 29
Denunciation

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 30
Languages and depositary

1. The Secretary-General of the United Nations is designated depositary of the present Convention.

2. The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

[176] The number of instruments of ratification foreseen in this article is the same as that required in the 1988 Convention. One delegation thought that 40 might be a more appropriate number.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.